



General Assembly

February Session, 2010

***Raised Bill No. 5369***

LCO No. 1206

\*01206\_\_\_\_\_HSG\*

Referred to Committee on Housing

Introduced by:  
(HSG)

***AN ACT CONCERNING FORECLOSURE MEDIATION.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. Section 49-31n of the 2010 supplement to the general  
2       statutes is repealed and the following is substituted in lieu thereof  
3       (*Effective July 1, 2010*):

4       (a) Prior to July 1, [2010] 2011: (1) Any action for the foreclosure of a  
5       mortgage on residential real property with a return date during the  
6       period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to  
7       the provisions of subsection (b) of this section, and (2) any action for  
8       the foreclosure of a mortgage on residential real property with a return  
9       date during the period from July 1, 2009, to June 30, [2010] 2011,  
10      inclusive, shall be subject to the provisions of subsection (c) of this  
11      section.

12      (b) (1) For any action for the foreclosure of a mortgage on residential  
13      real property with a return date during the period from July 1, 2008, to  
14      June 30, 2009, inclusive, the mediation period under the foreclosure  
15      mediation program established in section 49-31m shall commence  
16      when the court sends notice to each appearing party that a foreclosure

17 mediation request form has been submitted by a mortgagor to the  
18 court, which notice shall be sent not later than three business days after  
19 the court receives a completed foreclosure mediation request form. The  
20 mediation period shall conclude not more than sixty days after the  
21 return day for the foreclosure action, except that the court may, in its  
22 discretion, for good cause shown, (A) extend, by not more than thirty  
23 days, or shorten the mediation period on its own motion or upon  
24 motion of any party, or (B) extend by not more than thirty days the  
25 mediation period upon written request of the mediator.

26 (2) The first mediation session shall be held not later than fifteen  
27 business days after the court sends notice to all parties that a  
28 foreclosure mediation request form has been submitted to the court.  
29 The mortgagor and mortgagee shall appear in person at each  
30 mediation session and shall have authority to agree to a proposed  
31 settlement, except that if the mortgagee is represented by counsel, the  
32 mortgagee's counsel may appear in lieu of the mortgagee to represent  
33 the mortgagee's interests at the mediation, provided such counsel has  
34 the authority to agree to a proposed settlement and the mortgagee is  
35 available during the mediation session by telephone or electronic  
36 means. The court shall not award attorney's fees to any mortgagee for  
37 time spent in a mediation session if the court finds that such  
38 mortgagee has failed to comply with this subdivision, unless the court  
39 finds reasonable cause for such failure.

40 (3) Not later than two days after the conclusion of the first  
41 mediation session, the mediator shall determine whether the parties  
42 will benefit from further mediation. The mediator shall file with the  
43 court a report setting forth such determination and mail a copy of such  
44 report to each appearing party. If the mediator reports to the court that  
45 the parties will not benefit from further mediation, the mediation  
46 period shall terminate automatically. If the mediator reports to the  
47 court after the first mediation session that the parties may benefit from  
48 further mediation, the mediation period shall continue.

49 (4) If the mediator has submitted a report to the court that the  
50 parties may benefit from further mediation pursuant to subdivision (3)  
51 of this subsection, not more than two days after the conclusion of the  
52 mediation, but no later than the termination of the mediation period  
53 set forth in subdivision (1) of this subsection, the mediator shall file a  
54 report with the court describing the proceedings and specifying the  
55 issues resolved, if any, and any issues not resolved pursuant to the  
56 mediation. The filing of the report shall terminate the mediation period  
57 automatically. If certain issues have not been resolved pursuant to the  
58 mediation, the mediator may refer the mortgagor to any appropriate  
59 community-based services that are available in the judicial district, but  
60 any such referral shall not cause a delay in the mediation process.

61 (5) The Chief Court Administrator shall establish policies and  
62 procedures to implement this subsection. Such policies and procedures  
63 shall, at a minimum, provide that the mediator shall advise the  
64 mortgagor at the first mediation session required by subdivision (2) of  
65 this subsection that: (A) Such mediation does not suspend the  
66 mortgagor's obligation to respond to the foreclosure action; and (B) a  
67 judgment of strict foreclosure or foreclosure by sale may cause the  
68 mortgagor to lose the residential real property to foreclosure.

69 (6) In no event shall any determination issued by a mediator under  
70 this program form the basis of an appeal of any foreclosure judgment.

71 (7) Foreclosure mediation request forms shall not be accepted by the  
72 court on or after July 1, [2010] 2011, and the foreclosure mediation  
73 program shall terminate when all mediation has concluded with  
74 respect to any applications submitted to the court prior to July 1, [2010]  
75 2011.

76 (8) At any time during the mediation period, the mediator may refer  
77 the mortgagor to the mortgage assistance programs, except that any  
78 such referral shall not prevent a mortgagee from proceeding to  
79 judgment when the conditions specified in subdivision (6) of  
80 subsection (b) of section 49-31l, as amended by this act, have been

81 satisfied.

82 (c) (1) For any action for the foreclosure of a mortgage on residential  
83 real property with a return date during the period from July 1, 2009, to  
84 June 30, [2010] 2011, inclusive, the mediation period under the  
85 foreclosure mediation program established in section 49-31m shall  
86 commence when the court sends notice to each appearing party  
87 scheduling the first foreclosure mediation session. The mediation  
88 period shall conclude not later than the date sixty days after the return  
89 date for the foreclosure action, except that the court may, in its  
90 discretion, for good cause shown, (A) extend, by not more than thirty  
91 days, or shorten the mediation period on its own motion or upon  
92 motion of any party, or (B) extend by not more than thirty days the  
93 mediation period upon written request of the mediator.

94 (2) The first mediation session shall be held not later than fifteen  
95 business days after the court sends notice to each appearing party in  
96 accordance with subdivision (4) of subsection (c) of section 49-31l, as  
97 amended by this act. The mortgagor and mortgagee shall appear in  
98 person at each mediation session and shall have authority to agree to a  
99 proposed settlement, except that if the mortgagee is represented by  
100 counsel, the mortgagee's counsel may appear in lieu of the mortgagee  
101 to represent the mortgagee's interests at the mediation, provided such  
102 counsel has the authority to agree to a proposed settlement and the  
103 mortgagee is available during the mediation session by telephone or  
104 electronic means. The court shall not award attorney's fees to any  
105 mortgagee for time spent in a mediation session if the court finds that  
106 such mortgagee has failed to comply with this subdivision, unless the  
107 court finds reasonable cause for such failure.

108 (3) On or before the date of the first mediation session, the  
109 mortgagee or counsel for such mortgagee shall provide to the  
110 mortgagor the address, telephone number and electronic mail address  
111 for persons who have authority to agree to a proposed settlement of  
112 the foreclosure, including, but not limited to, the mortgagee, the

113 mortgage servicer and an agent of the mortgagee. The mortgagee's  
114 agent shall verify the receipt of information requested from the  
115 mortgagor.

116 (4) The mortgagee or counsel for such mortgagee shall bring to each  
117 mediation session a current itemized list of all fees and costs, including  
118 (A) any charges and attorney's fees requested by such mortgagee, and  
119 (B) all overdue amounts that must be paid by the mortgagor in order  
120 to satisfy the full obligations of the mortgage loan. While in mediation,  
121 the mortgagor and mortgagee and any attorney representing such  
122 mortgagor or mortgagee shall make a good-faith effort to mediate all  
123 issues. The court may sanction any mortgagor, mortgagee or attorney  
124 who does not make such good-faith effort.

125 ~~[(3)]~~ (5) Not later than two days after the conclusion of the first  
126 mediation session, the mediator shall determine whether the parties  
127 will benefit from further mediation. The mediator shall file with the  
128 court a report setting forth such determination and mail a copy of such  
129 report to each appearing party. If the mediator reports to the court that  
130 the parties will not benefit from further mediation, the mediation  
131 period shall terminate automatically. If the mediator reports to the  
132 court after the first mediation session that the parties may benefit from  
133 further mediation, the mediation period shall continue.

134 ~~[(4)]~~ (6) If the mediator has submitted a report to the court that the  
135 parties may benefit from further mediation pursuant to subdivision  
136 ~~[(3)]~~ (5) of this subsection, not more than two days after the conclusion  
137 of the mediation, but no later than the termination of the mediation  
138 period set forth in subdivision (1) of this subsection, the mediator shall  
139 file a report with the court describing the proceedings and specifying  
140 the issues resolved, if any, and any issues not resolved pursuant to the  
141 mediation. The filing of the report shall terminate the mediation period  
142 automatically. If certain issues have not been resolved pursuant to the  
143 mediation, the mediator may refer the mortgagor to any appropriate  
144 community-based services that are available in the judicial district, but

145 any such referral shall not cause a delay in the mediation process.

146 [(5)] (7) The Chief Court Administrator shall establish policies and  
147 procedures to implement this subsection. Such policies and procedures  
148 shall, at a minimum, provide that the mediator shall advise the  
149 mortgagor at the first mediation session required by subdivision (2) of  
150 this subsection that: (A) Such mediation does not suspend the  
151 mortgagor's obligation to respond to the foreclosure action; and (B) a  
152 judgment of strict foreclosure or foreclosure by sale may cause the  
153 mortgagor to lose the residential real property to foreclosure.

154 [(6)] (8) In no event shall any determination issued by a mediator  
155 under this program form the basis of an appeal of any foreclosure  
156 judgment.

157 [(7)] (9) The foreclosure mediation program shall terminate when all  
158 mediation has concluded with respect to any foreclosure action with a  
159 return date during the period from July 1, 2009, to June 30, [2010] 2011,  
160 inclusive.

161 [(8)] (10) At any time during the mediation period, the mediator  
162 may refer the mortgagor to the mortgage assistance programs, except  
163 that any such referral shall not prevent a mortgagee from proceeding  
164 to judgment when the conditions specified in subdivision (6) of  
165 subsection (c) of section 49-31l, as amended by this act, have been  
166 satisfied.

167 (11) Any case that has been reported as settled shall, pursuant to  
168 this section, be withdrawn not later than the date one hundred twenty  
169 days after the date of reported settlement, and any case that is not so  
170 withdrawn shall be dismissed by the court unless the court, for good  
171 cause shown, extends the time for withdrawal.

172 Sec. 2. Section 49-31l of the 2010 supplement to the general statutes  
173 is repealed and the following is substituted in lieu thereof (*Effective July*  
174 *1, 2010*):

175 (a) Prior to July 1, [2010] 2011: (1) Any action for the foreclosure of a  
176 mortgage on residential real property with a return date during the  
177 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to  
178 the provisions of subsection (b) of this section, and (2) any action for  
179 the foreclosure of a mortgage on residential real property with a return  
180 date during the period from July 1, 2009, to June 30, [2010] 2011,  
181 inclusive, shall be subject to the provisions of subsection (c) of this  
182 section.

183 (b) (1) Prior to July 1, [2010] 2011, when a mortgagee commences an  
184 action for the foreclosure of a mortgage on residential real property  
185 with a return date during the period from July 1, 2008, to June 30, 2009,  
186 inclusive, the mortgagee shall give notice to the mortgagor of the  
187 foreclosure mediation program established in section 49-31m by  
188 attaching to the front of the foreclosure complaint that is served on the  
189 mortgagor: (A) A copy of the notice of the availability of foreclosure  
190 mediation, in such form as the Chief Court Administrator prescribes,  
191 and (B) a foreclosure mediation request form, in such form as the Chief  
192 Court Administrator prescribes.

193 (2) Except as provided in subdivision (3) of this subsection, a  
194 mortgagor may request foreclosure mediation by submitting the  
195 foreclosure mediation request form to the court and filing an  
196 appearance not more than fifteen days after the return day for the  
197 foreclosure action. Upon receipt of the foreclosure mediation request  
198 form, the court shall notify each appearing party that a foreclosure  
199 mediation request form has been submitted by the mortgagor.

200 (3) The court may grant a mortgagor permission to submit a  
201 foreclosure mediation request form and file an appearance after the  
202 fifteen-day period established in subdivision (2) of this subsection, for  
203 good cause shown, except that no foreclosure mediation request form  
204 may be submitted and no appearance may be filed more than twenty-  
205 five days after the return date.

206 (4) No foreclosure mediation request form may be submitted to the

207 court on or after July 1, [2010] 2011.

208 (5) If at any time on or after July 1, 2008, but prior to July 1, [2010]  
209 2011, the court determines that the notice requirement of subdivision  
210 (1) of this subsection has not been met, the court may, upon its own  
211 motion or upon the written motion of the mortgagor, issue an order  
212 that no judgment may enter for fifteen days during which period the  
213 mortgagor may submit a foreclosure mediation request form to the  
214 court.

215 (6) Notwithstanding any provision of the general statutes or any  
216 rule of law to the contrary, prior to July 1, [2010] 2011, no judgment of  
217 strict foreclosure nor any judgment ordering a foreclosure sale shall be  
218 entered in any action subject to the provisions of this subsection and  
219 instituted by the mortgagee to foreclose a mortgage on residential real  
220 property unless: (A) Notice to the mortgagor has been given by the  
221 mortgagee in accordance with subdivision (1) of this subsection and  
222 the time for submitting a foreclosure mediation request form has  
223 expired and no foreclosure mediation request form has been  
224 submitted, or if such notice has not been given, the time for submitting  
225 a foreclosure mediation request form pursuant to subdivision (2) or (3)  
226 of this subsection has expired and no foreclosure mediation request  
227 form has been submitted, or (B) the mediation period set forth in  
228 [subdivision] subsection (b) of section 49-31n, as amended by this act,  
229 has expired or has otherwise terminated, whichever is earlier.

230 (7) None of the mortgagor's or mortgagee's rights in the foreclosure  
231 action shall be waived by the mortgagor's submission of a foreclosure  
232 mediation request form to the court.

233 (c) (1) Prior to July 1, [2010] 2011, when a mortgagee commences an  
234 action for the foreclosure of a mortgage on residential real property  
235 with a return date on or after July 1, 2009, the mortgagee shall give  
236 notice to the mortgagor of the foreclosure mediation program  
237 established in section 49-31m by attaching to the front of the writ,  
238 summons and complaint that is served on the mortgagor: (A) A copy



239 of the notice of foreclosure mediation, in such form as the Chief Court  
240 Administrator prescribes, (B) a copy of the foreclosure mediation  
241 certificate form described in subdivision (3) of this subsection, in such  
242 form as the Chief Court Administrator prescribes, and (C) a blank  
243 appearance form, in such form as the Chief Court Administrator  
244 prescribes.

245 (2) The court shall issue a notice of foreclosure mediation described  
246 in subdivision (3) of this subsection to the mortgagor not later than the  
247 date three business days after the date the mortgagee returns the writ  
248 to the court.

249 (3) The notice of foreclosure mediation shall instruct the mortgagor  
250 to file the appearance and foreclosure mediation certificate forms with  
251 the court no later than the date fifteen days from the return date for the  
252 foreclosure action. The foreclosure mediation certificate form shall  
253 require the mortgagor to provide sufficient information to permit the  
254 court to confirm that the defendant in the foreclosure action is a  
255 mortgagor, and to certify that said mortgagor has sent a copy of the  
256 mediation certificate form to the plaintiff in the action.

257 (4) Upon receipt of the mortgagor's appearance and foreclosure  
258 mediation certificate forms, and provided the court confirms the  
259 defendant in the foreclosure action is a mortgagor and that said  
260 mortgagor has sent a copy of the mediation certificate form to the  
261 plaintiff, the court shall schedule a date for foreclosure mediation in  
262 accordance with subsection (c) of section 49-31n, as amended by this  
263 act. The court shall issue notice of such mediation date to all appearing  
264 parties not earlier than the date five business days after the return date  
265 or by the date three business days after the date on which the court  
266 receives the mortgagor's appearance and foreclosure mediation forms,  
267 whichever is later, except that if the court does not receive the  
268 appearance and foreclosure mediation certificate forms from the  
269 mortgagor by the date fifteen days after the return date for the  
270 foreclosure action, the court shall not schedule such mediation.

271 (5) Notwithstanding the provisions of this subsection, the court may  
 272 refer a foreclosure action brought by a mortgagee to the foreclosure  
 273 mediation program at any time, provided the mortgagor has filed an  
 274 appearance in said action and further provided the court shall, not  
 275 later than the date three business days after the date on which it makes  
 276 such referral, send a notice to each appearing party scheduling the first  
 277 foreclosure mediation session for a date not later than the date fifteen  
 278 business days from the date of such referral.

279 (6) Notwithstanding any provision of the general statutes or any  
 280 rule of law, prior to July 1, [2010] 2011, no judgment of strict  
 281 foreclosure nor any judgment ordering a foreclosure sale shall be  
 282 entered in any action subject to the provisions of this subsection and  
 283 instituted by the mortgagee to foreclose a mortgage on residential real  
 284 property unless: (A) The mediation period set forth in [subdivision]  
 285 subsection (c) of section 49-31n, as amended by this act, has expired or  
 286 has otherwise terminated, whichever is earlier, or (B) the mediation  
 287 program is not otherwise required or available.

288 (7) None of the mortgagor's or mortgagee's rights in the foreclosure  
 289 action shall be waived by participation in the foreclosure mediation  
 290 program.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2010</i>	49-31n
Sec. 2	<i>July 1, 2010</i>	49-31l

***Statement of Purpose:***

To amend the judicial foreclosure mediation program by (1) extending the sunset date to June 30, 2011, and (2) codifying judicial standing orders.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*